

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA)	
)	
v.)	Criminal No. 00-37
)	
KEITH L. CLARK)	

GOVERNMENT'S RESPONSE TO
DEFENDANT'S MOTION FOR REDUCTION OF SENTENCE

AND NOW comes the United States of America, by its attorneys, Mary Beth Buchanan, United States Attorney for the Western District of Pennsylvania and Bruce J. Teiltelbaum, Assistant United States Attorney for said District and, in response to defendant's motion for reduction of sentence, states as follows:

On May 12, 2000, the defendant entered a guilty plea to Count Two of a five count Indictment charging him with distribution of 50 grams or more of crack cocaine, in violation of Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(A). The undisputed Presentence Report - a copy of which can be made available to the Court, if needed - found the defendant accountable for 325 grams of crack cocaine (see Defendant's Presentence Report, ¶ 12) and determined an initial adjusted offense Level of 34, Category IV (Id. at ¶¶ 17, 23 and 40) for a recommended sentencing range of 151-188 months. However, the Presentence Report further found that the defendant qualified as a career offender and, therefore, the actual range adjusted for acceptance of responsibility to be applied was Level 34, Category VI (262-327

months). See Defendant's Presentence Report, ¶¶ 25 and 54. In imposing sentence on August 17, 2000, the Court determined that the defendant's criminal history was over represented and granted a Shoupe departure, sentencing the defendant to 151 months, the bottom end of the original offense level. (Since the government did not file a Section 851 Motion, the mandatory minimum sentence was 120 months, rather than 240 months). See Judgment and Commitment Order (Dkt. No. 22), p. 5; and Defendant's Motion, p. 12.

ARGUMENT

_____ Defendant naturally presumes he would be entitled to the two level reduction occasioned by the crack guidelines pursuant to Title 18, United States Code, Section 3582(c)(2). (The defendant would not be eligible for anything beyond a two level reduction in accordance with U.S.S.G. § 1B1.10(b)(2)(A)). Should the amended crack guidelines apply to defendant's case, he would be entitled to a possible reduction from the range of 151-188 months (Level 31, Category IV) to 121-151 months (Level 29, Category IV). The question in resentencing the defendant pursuant to the amended guidelines is whether the Court should apply the reduction to the original career offender range of 262-327 months or to the post Shoupe departure range of 151-188 months. It would appear from Application Note 3 to U.S.S.G. § 1B1.10(b)(2) that a reduction based upon the post Shoupe sentencing range may be appropriate;

however, the government is unaware of any precedent as to this issue. A second question for the court would be, assuming a reduction is permissible, what is the appropriate response in light of the prior substantial downward departure.

The government notes that the defendant had been previously represented by Assistant Federal Public Defender William Penn Hackney, whose office has been generally appointed as to all pro se Section 3582(c)(2) motions. The government respectfully submits that, should the court desire additional input as to either of these two issues, a response be solicited from the Federal Public Defender's Office.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within Government's Response to Defendant's Motion for Reduction of Sentence was served by mail to and upon the following:

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DATED: April 21, 2008

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